U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF V-P-

DATE: OCT. 31, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, who holds a Ph.D. in technical sciences, seeks classification as a member of the professions holding an advanced degree. *See* section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director, Nebraska Service Center, denied the petition finding that the Petitioner did not establish that a waiver of the job offer requirement is in the national interest. Specifically, the Director concluded that the Petitioner had not demonstrated the necessary influence in the field.

The matter is now before us on appeal. The Petitioner submitted correspondence requesting two extensions, both of which we granted, in order to obtain expert letters in support of his appeal. We have since received a statement from the Petitioner indicating that he was unable to such letters, so we will base our decision on the record currently before us.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate his or her qualification for the underlying visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification normally requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –

> (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
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> (B) Waiver of Job Offer –
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> (i) National interest waiver. . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.[1]

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise...." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Matter of New York State Dep't of Transp., 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*NYSDOT*), set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must demonstrate that he or she seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that he or she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, a petitioner's assurance that he or she will, in the future, serve the national interest cannot suffice to establish prospective national benefit. *Id.* at 219. Rather, a petitioner must justify projections of future benefit to the national interest by establishing a history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6.

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[1] Pursuant to section 1517 of the Homeland Security Act of 2002 ("HSA"), Pub. L. No. 107-296, 116 Stat. 2135, 2311 (codified at 6 U.S.C. § 557 (2012)), any reference to the Attorney General in a provision of the Act describing functions that were transferred from the Attorney General or other Department of Justice official to the Department of Homeland Security by the HSA "shall be deemed to refer to the Secretary" of Homeland Security. *See also* 6 U.S.C. § 542 note (2012); 8 U.S.C. § 1551 note (2012).

II. ANALYSIS

The Petitioner holds a master of engineering materials and a Ph.D. in the science of metals and thermal processing of metals. While the Petitioner did not initially describe his proposed work, he provided a statement in response to a request for evidence from the Director. According to his statement, the Petitioner's "knowledge of methods for obtaining, processing, researching and the protection of metallic alloys can be used in a vast array of fields." He further stated his intent to "us[e] modern materials in combination with [] film heating elements" in order "to create a sportswear [line] that will effectively burn excess weight by localizing heat to the problem areas during training."

The Petitioner submitted various documents including copies of his academic credentials, a list of publications and presentations, a personal statement, and two patents registered in the Ukraine in 2013. The record establishes that the Petitioner is a member of the professions holding an advanced degree, that his research is in an area of substantial intrinsic merit, and that the proposed benefits of his work will be national in scope.[2] It remains, then, to determine whether he will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Under the third prong of the *NYSDOT* analytical framework, a petitioner must demonstrate that he or she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. A petitioner must have a past record that "justifies projections of future benefit to the national interest" by exhibiting "some degree of influence on the field as a whole." *Id.* at 219, n. 6. As previously stated, a petitioner's assurance that he or she will, in the future, serve the national interest cannot suffice to establish prospective national benefit. *Id.* at 219. Without evidence of the influence his work has already had on the field as a whole, the Petitioner cannot be found to qualify for the national interest waiver.

On appeal, the Petitioner requested, and was granted, two extensions to obtain letters from experts which "will identify the Applicant's potential contributions and evaluate the significance of their future scientific impact." The Petitioner does not claim that his work has already influenced the field as a whole as required under the third prong of the NYSDOT analytical framework. Without such a showing, employment in a beneficial occupation does not, by itself, qualify the Petitioner for the national interest waiver.

Notwithstanding the above, the record does not establish the Petitioner's impact on the field. Regarding his publications and patents, the Petitioner did not provide evidence, such as a citation record indicative of the impact of his work or letters from others indicating the use of his patent, which establishes that his research has already influenced the field. As stated by the Director, "[t]he record does not show any external interest in the beneficiary's article[s] by members of the

[2] A review of the record establishes the Petitioner's intention to continue his research and therefore, he has demonstrated that the proposed benefits of his work will be national in scope.

discipline" and "there is no evidence to suggest that the patented materials have been applied, marketed and accepted by the intended audience." While publications and patents may demonstrate that that the Petitioner's research findings were shared with others and may be acknowledged as original based on their selection to be presented or accepted, without additional evidence they do not establish that those findings have had an impact on the field as a whole.

We note that the Petitioner also contends that his "work is unique." As stated by the Director, "[s]pecial or unusual knowledge or training does not inherently meet the national interest threshold." In fact, that issue properly falls under the jurisdiction of the Department of Labor through the alien employment certification process. *See* § 212(a)(5)(A)(i) of the Act; *NYSDOT*, 22 I&N Dec. at 215, 221.

III. CONCLUSION

A plain reading of the statute indicates that it was not the intent of Congress that every advanced degree professional or individual of exceptional ability should be exempt from the requirement of a job offer based on national interest. For the reasons discussed above, we find the record insufficient to confirm that the scope of the Petitioner's proposed work or his past record of achievement is at a level sufficient to waive the job offer requirement which, by law, normally attaches to the visa classification sought by the Petitioner. Considering the record, the Petitioner has not established by a preponderance of the evidence that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

For the above stated reasons, the Petitioner has not met his burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013).

ORDER: The appeal is dismissed.

Cite as *Matter of V-P-*, ID# 45811 (AAO Oct. 31, 2016)